REMARKS:

I. Status of the Claims

Prior to this amendment, claims 1 - 43 were pending. With the entry of this amendment, claims 1 and 15 are amended, claims 44-45 are added, claims 4-14, 18-33, and 37-42 are withdrawn, claims 24 and 30-33 are withdrawn and amended, and claims 2-3, 16-17, 34-36, and 43 remain pending as originally filed. Claims 1-3, 15-17, 34-36, and 43-45 read on the elected invention.

Support for the new and amended claims is found throughout the specification. For example, support for new claim 44 can be found in paragraph 24, which states that the invention "provides an aquaculturally-raised shrimp comprising a DHA level higher than about 12.5 μg/g [and] comprising carotenoids, wherein astaxanthin comprises less than about 80% of the total carotenoids."

Support for new claim 45 can be found, *inter alia*, in paragraph 10, which states that shrimp of the invention are "enriched in docosahexaenoic acid (DHA), certain carotenoids, such as lutein, certain flavor enhancing compounds, such as 2,6-dibromophenol or 2,4,6-tribromophenol, and/or depleted in cholesterol;" paragraph 21, which states that the shrimp can be enriched with "LC-PUFAs (*e.g.*, DHA, ARA or arachidonic acid, EPA), carotenoids (*e.g.*, lutein, β-carotene, astaxanthin, zeaxanthin, γ-carotene);" paragraph 24, which states that the shrimp can comprise lycopene and canthaxanthin and includes "aquaculturally raised shrimp." Finally, the claim is supported by paragraph 25, which states that the flavor enhancer can comprise iodine.

Support for amended claim 30 can be found, for example, in paragraph 45, stating that the DHA is provided "at a level that provides DHA content in the feed from 5% of the total fat in the feed to 50% of the total fat in the feed," and that such a feed could "elevate the DHA levels of the shrimp to above 12.5 μg DHA/g fresh weight of shrimp."

Support for amended claims 31-33 can be found, in part, in paragraph 44, which states that "[l]utein, zeaxanthin or lycopene in their various forms are added to the standard feed to provide final carotenoid concentrations from 1 mg to 10 g per kg feed." The amendments to claims 31-33 are further supported by paragraph 29, which states that "[t]he invention also provides that the lutein level is greater than 5 μg per gram fresh weight[,] . . . the lycopene level is greater than 5 μg per gram fresh weight[, and] . . . the zeaxanthin level is greater than 6 μg per gram fresh weight." No new matter enters through this amendment.

II. Restriction Requirement

The Office requires restriction to one of nine groups, as shown in the table below. Applicant provisionally elects, with traverse, Group I. Applicant submits that claims 44 and 45 link Groups I and II and that if either is allowed, Group II is eligible for rejoinder.

Group	Claims	Description
I	1-3, 15-17, 34-36 and 42	Aquaculturally-raised shrimp comprising an elevated DHA level, a method of making said shrimp using a feed comprising DHA, and a method of using the shrimp to feed a human or non-human animal.
II	4-6 and 42	Aquaculturally-raised shrimp comprising an elevated level of carotenoids, a method of making said shrimp using a feed comprising carotenoids, and a method of

		using the shrimp to feed a human or non-human animal.
III	7-11 and 42	Aquaculturally-raised shrimp comprising a flavor enhancer and a method of making said shrimp using a feed comprising bromophenols and a method of using the shrimp to feed a human or non-human animal.
IV	12-14	Aquaculturally-raised shrimp comprising lower levels of cholesterol.
V	18-22	Aquaculturally-raised organic shrimp fed a diet which includes hydrolyzed plant protein and microalgae.
VI	23-25	Shrimp feed comprising red rice yeast.
VII	26 and 30	Shrimp feed comprising DHA.
VIII	26, 31-33, 37 and 38	Shrimp feed comprising a carotenoid and a method of making shrimp using said feed.
IX	26-29 and 39-41	Shrimp feed comprising a bromophenol and a method of making shrimp using said feed.

Applicant respectfully traverses the restriction requirement for four reasons. First, Applicant submits that claim 43 was omitted from the nine (9) groups of inventions as defined by the Office. However, elected Group I logically includes claim 43, which recites a method of feeding a shrimp comprising a high level of DHA to a human, and Applicant respectfully proposes that including claim 42 (related to bromophenols), rather than claim 43, in Group I was simply a typographical error. In the interest of facilitating prosecution, Applicant elects Group I with the understanding that it includes claim 43. Applicant notes that Claim 43 also belongs to Groups II, IV, VII, and VIII, as defined by the Office.

Applicant also traverses the restriction requirement because the Office is attempting to improperly carve up the claimed invention. As evidenced by the restriction requirement set forth at page 2 of the Office Action, the Office is requiring restriction within, *inter alia*, independent claims 26, 39, and 40 (although not within, *inter alia*, elected independent claims 1-3 and 15-17). Applicant has a statutory right under 35 U.S.C. § 112, second paragraph, to claim the subject matter regarded as the invention in the manner Applicant chooses. Issuing a restriction requirement within a claim with the idea that Applicant would have to carve up that claim and pursue the non-elected subject matter in a separate application violates this right under 35 U.S.C. § 112. Indeed, the predecessor to the Federal Circuit has characterized such action as tantamount to a refusal to examine. *In re Weber*, 198 U.S.P.Q. 328 (CCPA 1978); *In re Haas*, 198 U.S.P.Q. 334 (CCPA 1978). And "it is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention." M.P.E.P. 803.02. Such is not the case here.

Third, Applicant respectfully refers the Office to M.P.E.P. § 803, which sets forth the criteria and guidelines for examiners to follow in making proper requirements for restriction. The M.P.E.P. instructs the Office as follows:

> If the search and examination of an entire application can be made without **serious burden**, the Office **must** examine it on the merits, even though it includes claims to independent or distinct inventions.

M.P.E.P. § 803 (emphasis added).

Here, Applicant respectfully submits that the Office has not demonstrated that examining Groups I-IX together will constitute a serious burden, despite the assertion

that they are "not disclosed as capable of use together and they have different functions." For example, the shrimp of claim 43, fed to a human or non-human animal, can be enriched in any or all of the health-beneficial components of claims 1-20, and be grown under any or all of the conditions described in the remaining claims 21-42. The same reasoning holds true for the shrimp of new claims 44 and 45. Further, Applicant respectfully submits that a search for claim 43 could be made without *serious burden*, and the search and examination of claim 43 should substantially, if not completely, overlap the necessary search and examination for Groups I-IX.

Lastly, less than the entire scope of the original claims is covered by Groups I-IX recited by the Office. For example, none of these groups encompasses a feed comprising chlorophyll, which is recited in claim 26.

Please proceed with examination of claims 1-3, 15-17, 34-36, and 43-45. Applicant respectfully submits that the examination of all of claims 1-45 could be made without *serious burden*, and requests reconsideration of the restriction requirement. Please also grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: April 19, 2007

By: _____

Lisa M. Matovcik
Reg. No. 53,283
Phone: (202) 408-4000
Fax: (202) 408-4400
Email: lee.matovcik@finnegan.com